

# Rule 12.290. Depositions Before Action or Pending Appeal

## **(a) Before Action.**

**(1) Petition.** A person who desires to perpetuate that person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition must:

**(A)** be titled in the name of the petitioner; and

**(B)** show:

**(i)** that the petitioner expects to be a party to an action cognizable in a court of Florida, but is presently unable to bring it or cause it to be brought,

**(ii)** the subject matter of the expected action and the petitioner's interest in it,

**(iii)** the facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it,

**(iv)** the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and

**(v)** the names and addresses of the persons to be examined and the substance of the testimony that the petitioner expects to elicit from each; and must ask for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

**(2) Notice and Service.** The petitioner must serve a notice on each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for an order described in the petition. At least 20 days before the date of hearing the notice must be served either within or without the county in the manner provided by law for service of summons, but if such service cannot with due diligence be made on any expected adverse party named in the petition, the court may make an order for service by publication or otherwise, and must appoint an attorney for persons not served in the manner provided by law for service of summons who will represent them, and if they are not otherwise represented, will cross-examine the deponent.

**(3) Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it must make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders in accordance with the requirements of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for deposition was filed.

**(4) Use of Deposition.** A deposition taken under this rule may be used in any action involving the same subject matter subsequently brought in any court in accordance with rule 12.330.

**(b) Pending Appeal.** If an appeal has been taken from a judgment of any court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the deposition on the same notice and service as if the action was pending in the court. The motion must show (1) the names and addresses of persons to be examined and the substance of the testimony which the movant expects to elicit from each, and (2) the reason for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay in justice, it may make an order allowing the deposition to be taken and may make orders of the character provided for by these rules, and thereupon the deposition may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

**(c) Perpetuation by Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.